

# Supporting Document No. 5

Item No. 8  
April 9, 2003

# San Diego BayKeeper

*Environmental Law and Policy Clinic*

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COPY

March 18, 2003

3/19  
Mike M.  
pls prepare an agenda  
for the 9 Apr  
bd mtg.  
to discuss  
this.  
2003 MAR 19 P 12:30  
SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

VIA HAND DELIVERY AND U.S. MAIL

Thomas Pastuszka  
Clerk of the Board of Supervisors  
County of San Diego  
1600 Pacific Highway  
Room 402  
San Diego, California 92101

RE: Violation of Ralph M. Brown Act: Demand to Cure  
Public Records Act Request

Dear Mr. Pastuszka:

This letter is written on behalf of San Diego BayKeeper, a non-profit environmental organization committed to enforcement of the Clean Water Act in watersheds throughout San Diego County.

## Brown Act Violations

San Diego BayKeeper hereby demands, pursuant to and in compliance with California Government Code Section 54960.1(b) (all further statutory references are to the California Government Code unless otherwise noted), that the Board of Supervisors for the County of San Diego take whatever action necessary to cure the violations of the Ralph M. Brown Act ("Brown Act," §§ 54950 *et seq.*) described as follows:

1. In violation of §§ 54953 and 54962, the Board of Supervisors met on or before January 28, 2003 in closed session and directed County staff and/or County Counsel to prepare a legislative proposal that was ultimately introduced as State of California Assembly Bill 1517 ("storm water legislation"). Section 54953 mandates that the County conduct such business in open session with opportunity for public attendance. Section 54962 precludes closed sessions for issues not expressly authorized by the Brown Act;

2. In violation of §54954.2, the Board of Supervisors never posted any agenda sufficiently detailing closed session discussion(s) regarding direction to County staff and/or County Counsel to draft storm water legislation;
3. In violation of §54954.5, the Board of Supervisors conducted closed session discussions regarding direction to County staff and/or County Counsel to draft storm water legislation, an issue for which the Brown Act does not provide safe harbor. In the alternative, the County failed to substantially comply with the safe harbor provisions of §54954.5;
4. In violation of §§54957.1 and 54957.7(b), the Board of Supervisors failed to report actions taken in closed session regarding direction to County staff and/or County Counsel to draft storm water legislation; and,
5. In violation of §54957.7, the Board of Supervisors failed to announce in an open meeting that it would be discussing potential storm water legislation in closed session.

#### Public Records Act Request

As noted above, San Diego BayKeeper is concerned that the San Diego County Board of Supervisors illegally met in closed session to discuss storm water legislation currently embodied as Assembly Bill 1517. It is in the public's interest that those individuals at the County responsible for such impropriety be held responsible.

In this regard, I hereby request access to certain non-privileged materials in the possession of the County of San Diego for inspection and copying pursuant to the California Public Records Act (PRA). (Government Code §§6252, *et seq.*) For the purposes of this request, "County" or "County Employees" includes, but is not limited to, all planners, consultants, directors, Supervisors, aides, County Counsel, and clerical staff employed by the County.

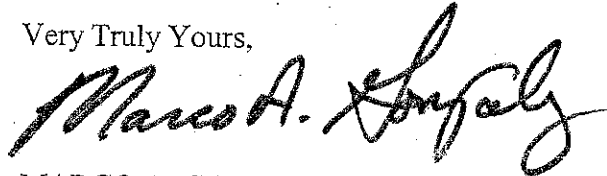
I would like to review all records, as that term is used in the PRA, in the County's possession that concern or relate to the drafting and approval of storm water legislation that became Assembly Bill 1517. The records should include, but not be limited to, interagency memoranda, intra-agency memoranda, notes, formal and informal reports, phone records, schedules, data, correspondence, comments from the public, preliminary drafts retained in the ordinary course of business, and all documents that reflect the Board of Supervisors' consideration of the proposed legislation in open or closed sessions. Because it is clearly in the public's interest that full disclosure on this issue be had, I would like to specifically request access to the following:

1. All County Board of Supervisors agendas reflecting discussions of the storm water legislation;
2. Non-privileged minutes for all open and closed meetings where the storm water legislation was discussed;
3. All documents reflecting the votes of individuals Supervisors relating to (a) approval of the storm water legislation, and (b) direction to staff/County Counsel for its preparation;
4. All non-privileged memoranda or other documentation of communications between County staff and County Counsel regarding the storm water legislation;
5. All correspondence between County Counsel and any representative of the Building Industry Association or the law firm of Latham and Watkins regarding the storm water legislation;
6. All correspondence between County employees and any other co-permittee representative regarding the storm water legislation;
7. Schedules of all Supervisors reflecting discussions with County Counsel or other County staff regarding the Storm Water Legislation;
8. All documents submitted to each Supervisor by County Counsel or other County staff regarding the storm water legislation;
9. All documents reflecting correspondence regarding the storm water legislation between any County employee and any legislative consultant employed by the County; and,
10. All documents reflecting discussions or correspondence between any County employee or representative and Assemblyman George Plescia or any other member of the California State Assembly or Senate.

As required by Section 6257 of the PRA, I ask that you make these records available promptly. To the extent that a portion of any record is expressly exempted under the PRA, please segregate and delete the exempt information so that the remainder may be provided to satisfy the request. Please provide a log of all exempted information so that the public interest justification for nondisclosure mandated by the act may be made.

Please contact me at your earliest convenience to discuss a date and time for reviewing the documents.

Very Truly Yours,



MARCO A. GONZALEZ  
Attorney for San Diego BayKeeper

cc: San Diego Bay Council  
Michael Aguirre, Esq.  
Bruce Reznik, Esq., SD BayKeeper  
David Beckman, Esq., NRDC  
Rod Lorang, Esq., San Diego County Counsel (Hand Delivery)  
John Robertus, California Regional Water Quality Control Board  
Hon. Donna Frye, San Diego City Council  
Hon. Michael Zucchet, San Diego City Council  
Hon. Scott Peters, San Diego City Council  
Hon. Dick Murphy, Mayor, City of San Diego  
Terry Rogers, San Diego Union Tribune  
Marty Graham, North County Times  
Erik Andersen, KPBS